

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

BELL FOOD SERVICES, INC.

Employer ¹

and

LOCAL 371, UNITED FOOD AND
COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO

Petitioner

Case No. 34-RC-1749

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer is a Connecticut corporation in the food service industry. Its sole facility, which contains an office, a warehouse, a commissary where it prepares food, a money room, and a service area, is located in Glastonbury, Connecticut. Its

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The Employer's name appears as amended at the hearing.

business consists of providing cafeteria and vending machine services for customers at their various facilities in Connecticut.

The Petitioner seeks to represent the Employer's 17 route drivers (also referred to in the record as "route service employees" and "vending route drivers"). The Employer contends that a unit limited to route drivers is inappropriate. Although it initially proposed a unit composed of all of its approximately 60 hourly paid employees, the Employer subsequently indicated that the smallest appropriate unit was one which encompassed all 32 employees in its Vending Operations Department: namely, the 17 petitioned-for employees, 7 site attendants (also referred to in the record as "location service employees" and "resident attendants" or "vending resident attendants"), 5 mechanics, 2 warehouse employees and 1 fleet coordinator. There is no history of collective bargaining for any of the positions involved herein.

The Vending Operations Department is under the general overall supervision of Donald Kerry Flynn, Director of Vending Operations. Reporting to Flynn are Operations Coordinator Jim Wanczyk, Warehouse Manager Jim Kology, and Service Manager Mike Hansen. Wanczyk, along with Route Supervisor Eric Bocchino and Assistant Route Supervisors Brian Collins and Andy Pare, directly supervise both the 17 route drivers and the 7 location service employees. Kology directly supervises the 2 warehouse employees and the fleet coordinator. Hansen directly supervises the 5 mechanics.

The record indicates that both the 17 route drivers and the 7 site attendants are responsible for stocking and servicing the vending machines which the Employer maintains at its customers' facilities. However, unlike the site attendants who are permanently assigned to a facility where they report each day, the route drivers report each day to the Employer's Glastonbury facility where they load the Employer's vans with products which they deliver to the customers' facilities. Thus, in addition to delivering the products and servicing the machines at facilities assigned to them, they also deliver products to facilities where the machines are serviced by the site attendants. The route drivers also deliver some products (e.g., soups and sauces) to the cafeterias operated by the Employer. They are also responsible for picking up cafeteria deposits and vending machine receipts which they bring back to the Employer's Glastonbury facility at the end of the day.

The record indicates that the 2 warehouse employees are assigned to the Glastonbury facility's warehouse where they are primarily responsible for off-loading

and stocking incoming deliveries, and performing various janitorial duties. Although they may also deliver “vital” products when needed in “emergency” situations, the record reveals that this only consumes 2 to 4 hours of their time a week.

The record indicates that the fleet coordinator spends approximately 15 percent of his time in the warehouse where he schedules the Employer’s vehicles for service. The remainder of his time is spent performing a variety of undefined tasks in the money room, which is part of the Fiscal Department and under the supervision of Controller and Fiscal Manager Robert Mackler.

The record indicates that 3 of the 5 mechanics are assigned company vehicles and are primarily responsible for the installation and major repair of the Employer’s equipment at the customers’ facilities. Although the other 2 mechanics may also drive to a customer’s facilities, the record indicates that they are primarily assigned to the Glastonbury facility where they maintain, refurbish, and repair the Employer’s equipment. Like the warehouse employees, the mechanics may also deliver products to the Employer’s customers “on an as needed basis.”

Only one of the 17 current route drivers has been employed in another position and there is no evidence that any of the other Vending Operations Department employees have ever been employed as a route driver. Only the route drivers and the site attendants receive a commission in addition to their hourly rate. However, only the route drivers are guaranteed 10 hours of overtime pay each week. Although all Vending Operations Department employees receive the same basic benefits, only the route drivers’ vacation pay includes the guaranteed overtime. Although one policy manual is applicable to all employees, vacations are scheduled pursuant to separate seniority lists which are maintained for each job classification. All employees are required to wear uniforms. Site attendants however, wear different uniforms than the route drivers, mechanics and warehouse employees.

Based upon the above and the record as a whole, and in keeping with well established precedent, I find that none of the other Vending Operations Department employees possess a sufficient community of interest with the route drivers to require their inclusion in the petitioned-for unit, that the route drivers constitute a functionally distinct grouping of employees, and that they therefore constitute a separate appropriate unit for the purposes of collective bargaining. *Liquid Transportation, Inc.*, 250 NLRB 1121, 1124 (1980); *Diamond Standard Fuel Corp.*, 179 NLRB 702, 704-705

(1969); *Mc-Mor-Han Trucking Co., Inc.*, 166 NLRB 700 (1967); and *J.L. Brandeis & Sons, Inc.*, 142 NLRB 825 (1963). See also, *Stanley M Feil, Inc.*, 250 NLRB 1154, 1171-72 (1980); and *Nuturn Corporation*, 235 NLRB 1139, footnote 4, (1978).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time route drivers employed by the Employer at its Glastonbury, Connecticut facility; but excluding all other employees, clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Local 371, United Food and Commercial Workers International Union, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7)

days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before August 12, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 19, 1999.

Dated at Hartford, Connecticut this 5th day of August, 1999.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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